

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
on its own motion)	Docket No. 01-0705
)	
Northern Illinois Gas Company d/b/a NICOR)	
Gas Company)	
)	
Reconciliation of Revenues collected under)	
Gas Adjustment Charges with Actual Costs)	
prudently incurred)	
)	
Illinois Commerce Commission)	
on its own motion)	Docket No. 02-0067
)	
Northern Illinois Gas Company d/b/a NICOR)	
Gas Company)	
)	
Proceeding to review Rider 4, Gas Cost,)	
pursuant)	
to Section 9-244(c) of the Public Utilities Act)	
)	
Illinois Commerce Commission)	Docket No. 02-0725
on its own motion)	
)	
Northern Illinois Gas Company d/b/a NICOR)	
Gas Company)	
)	
Reconciliation of Revenues collected under)	
Gas Adjustment Charges with Actual Costs)	
prudently incurred)	

REDACTED

**REBUTTAL TESTIMONY ON REOPENING
OF**

MARK MAPLE

Senior Energy Engineer

Energy Division—Engineering Department

FEBRUARY 2004

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1 Q. Please state your name and business address.

2 A. My name is Mark Maple and my business address is: Illinois Commerce
3 Commission, 527 East Capitol Avenue, Springfield, Illinois 62701.

4 Q. Are you the same Mark Maple who previously filed direct testimony in this
5 docket?

6 A. Yes.

7 **Corrections to Direct Testimony**

8 Q. Do you have any corrections to your previously filed direct testimony?

9 A. Yes. There are two errors in Table 3, which appears on page 32 of my direct
10 testimony. The 1999 credits should be \$8,898,484 and the 2000 credits should
11 be \$17,588,882.

12 Q. Why is this correction necessary?

13 A. When preparing my testimony, I relied on the Company's response to ENG 1.4 to
14 calculate those two numbers. That response purports to show the "Total Firm
15 Deliverability Credits" for 1999 and 2000. However, there is one item – Storage
16 Services Revenue – which is included in this total but is actually part of the

17 Commodity Adjustment. Upon further examination of the document and other
18 Company responses, I recognized the error and am making the necessary
19 corrections.

20 Q. Does this error in any way change your argument or your conclusions as outlined
21 in your direct testimony?

22 A. No. The values themselves were not as important as the trends and the
23 magnitudes of the numbers. The intent was to show that Nicor purposely held
24 down the credits in 1999 to inflate the benchmark, and then basically doubled its
25 credits in 2000 once the PBR was in place and it could profit from the increase.
26 The new, corrected numbers still strongly support this position.

27 **Use of Deposition Transcripts**

28 Q. Why does your direct testimony contain quotations from the deposition
29 transcripts?

30 A. I provided the transcript quotations because I relied, in part, on the deposition
31 testimony of Nicor's current and former employees when formulating my
32 opinions.

33 Q. Is this the type of information that you and typically rely upon in proceedings at

34 the Commerce Commission?

35 A. Yes, I rely upon information provided by the Company when performing my
36 analyses for the Commission. I usually rely upon information provided by the
37 Company through data request responses since that is the typical method of
38 discovery in docketed cases. However, in this docket, depositions were taken of
39 Company employees due to the complex nature of the case and the seriousness of
40 the allegations raised. Thus I relied upon the results of both forms of discovery - the
41 deposition testimony and the written data request responses.

42 Q. Do you believe that the deposition testimony is reliable enough to base your opinion
43 upon it?

44 A. Yes. I always expect both the Company and its employees to provide complete,
45 accurate, and honest answers regardless of the method of discovery. I normally
46 rely upon company data request responses when forming my opinions. When I
47 send a request to a company, one of its witnesses who is knowledgeable on the
48 subject matter provides a response. Likewise, Staff and the intervenors used the
49 depositions to pose questions to Company employees regarding areas in which
50 each person had knowledge. Each deponent gave his or her responses under oath
51 and verified that the answers given were truthful. No such verification is required of
52 data request responses. Therefore, the deposition testimony is at least as reliable,
53 if not more so, than the data request responses from the Company.

54 **Rebuttal of Mr. Harms' Testimony**

55 **Inventory Value Team Report**

56 Q. In lines 170-187 of his rebuttal testimony, Mr. Harms defends the Company's
57 decision to withhold the Inventory Value Team Report ("IVTR") from the other
58 parties during Docket No. 99-0127. Does Mr. Harms present any new or
59 compelling reasons to substantiate Nicor's claim that the IVTR was not
60 responsive to CUB DR 27?

61 A. No. Mr. Harms rehashes the Company's contention that the IVTR was not a
62 projection, analysis or study of the potential profits from a PBR. Nicor's
63 argument seems to be that profit is not discussed anywhere in the report and
64 thus the report is not responsive to CUB DR 27 which asked:

65 *"Please provide a copy of all projections, analyses and*
66 *studies prepared which examine the extent to which the*
67 *Company may profit under its proposal. Include copies of all*
68 *communications which discuss the profit potential of the*
69 *Company's proposal."*

70 In my view, the IVTR is indeed all about the potential profits from a PBR. This is
71 clearly evident from the recommendations stated in the IVTR:

72 "We recommend that the company '***capture***' the ***LIFO***

73 **inventory value** by filing and implementing a Gas Rate
74 Performance Plan (GRPP) related to gas costs.” (See Staff
75 Ex. 2.0, Attachment A, p.2 emphasis added)

76 and also...

77 “Our approach was to determine the best strategy to
78 **capture the value** of the LIFO layers.” (NIC 003657,
79 emphasis added).

80 By capturing the inventory value, Nicor would have **potential profits**. However,
81 even if one were to accept Mr. Harm’s view that the IVTR was not about profit,
82 Nicor’s answer to the DR suggests that Nicor had performed no studies
83 whatsoever:

84 *”The Company has not performed any projections, analyses*
85 *or studies related to its potential performance under its*
86 *proposal nor does the Company have any communications*
87 *which address this issue.”*

88 Notice that Nicor’s response extends well beyond the issue of *profitability* and
89 encompasses the broader category of *performance* under the PBR. The
90 American Hermitage Dictionary defines *performance* to mean “the way in which
91 someone or something functions”. Nowhere in the definition of performance
92 does it specify that profits are necessary to have a performance. Certainly the

93 IVTR projects, analyzes or studies potential performance under the PBR. The
94 IVTR talks at length about the value of storage gas and the various actions that
95 the Company could take, like instituting a PBR program, to realize that value for
96 the Company. Returning to the recommendations of the IVTR, the report
97 explains “Our approach was to **determine the best strategy** to capture the value
98 of the LIFO layers.” (emphasis added) This report clearly studied and analyzed
99 how the Company would perform under various scenarios, one being the PBR
100 environment. Thus, when Nicor stated that it “*has not performed any projections,*
101 *analyses or studies related to its potential performance under its proposal*”, it was
102 not being truthful. Clearly Nicor acted deceitfully and in bad faith when it failed to
103 provide the IVTR to Staff and CUB.

104 Q. Does Mr. Harms use any other faulty logic in his arguments regarding the IVTR?

105 A. Yes. The basis for Mr. Harms’ position seems to be that the PBR “was
106 developed well after the IVTR was completed.” Somehow he reasons that the
107 IVTR must not have been a projection, analysis, or study since it came prior to
108 the actual PBR proposal. However, that is precisely the purpose of a projection,
109 analysis, or study – to find out ahead of time if a course of action is feasible. The
110 IVTR conclusion, “We recommend that the company ‘capture’ the LIFO inventory
111 value by filing and implementing a Gas Rate Performance Plan...” and the
112 evidence we now have that Nicor used the PBR in order to capture the LIFO

value leads to the irrefutable conclusion that this document was indeed a study of potential performance under the PBR (See Staff Ex. 2.0, Attachment A, p.2). The projections of performance and profit embedded in the IVTR are directly linked to the PBR program that the Company proposed in Docket 99-0127.

Buckets Reports

Q. Mr. Harms also defends Nicor's decision to withhold the Buckets Reports from the parties (Nicor Gas Ex. 9.0, p.9). Does Mr. Harms present any new or compelling reasons to substantiate Nicor's claim that the Buckets Reports were not responsive to POL 1.2, POL 2.1 or CUB 1.17?

A. No. I have previously addressed these fallacious arguments in my direct testimony (ICC Staff Exhibit 2.0, pp. 42-47). Further, it is worth noting once again that several Company employees agreed with Staff and believed that the Buckets Reports were responsive to the data requests.

Quarterly Reports to the ICC

Q. Mr. Harms states on page 10 of his rebuttal testimony that you contend that the LIFO decrement should have been classified in its own category in the quarterly reports given to Staff. Is that an accurate summary of your testimony?

130 A. No, Mr. Harms misses the point entirely. What I was trying to convey on pages
131 51-52 of my direct testimony is that initially the Company had filed its first two
132 reports under the same format. Within that format, there was no category that
133 would encompass a LIFO decrement, had there actually been a decrement in
134 those quarters. Therefore, if a decrement had existed, it would have fallen under
135 an unmentioned category, presumably one named "LIFO decrement" or
136 something similar. I believe that eventually Nicor began to anticipate that it
137 would have future decrements to report, and it did not want Staff to see those
138 decrements and start asking questions. This is corroborated by the note in the
139 memo to file written by Jeff Metz on August 4, 2000. (See Staff Ex. 2.0,
140 Attachment M, p. 2). Therefore, Nicor altered the reporting format to hide the
141 decrement within a larger, broader category where it could remain nameless and
142 the magnitude of its gains obscured.

143 It is irrelevant that there was no agreed to format that Nicor had to follow, as Mr.
144 Harms contends. The fact is that Nicor picked a format that worked fine for
145 several quarters and then changed it when they realized it would expose the
146 Company's LIFO decrement scheme to Staff. Mr. Harms says nothing in his
147 testimony to explain why Nicor would change the format midstream, nor does he
148 refute my claim that it was done intentionally to hide the decrement from Staff.

149 **Post Board of Directors Presentation**

150 Q. Mr. Harms states on page 5 of his rebuttal testimony that you relied heavily on a
151 Post Board of Directors presentation as a basis for stating that Nicor would not
152 have pursued a PBR absent the low-cost LIFO layers. Do you agree with that
153 statement?

154 A. No. It is true that I did use that document as support for my position. However, I
155 also quoted the depositions of four other Company witnesses who shared my
156 position. Also, the existence of the Inventory Value Team Report and the
157 Company's heavy reliance on LIFO storage gas to attain savings during the PBR
158 are all facts that suggest the low-cost LIFO gas was central to Nicor's original
159 PBR strategy.

160 Q. Regarding the aforementioned Post Board of Directors presentation document,
161 does Mr. Harms in any way refute the statements made in that document or
162 challenge the authenticity of the document?

163 A. No. Mr. Harms only states that the document does not agree with his own
164 understanding of the Company's intentions during the 1999 time frame. He also
165 seems to imply that because the document in question was prepared "nearly two
166 years after the decision to go forward with the GCPP was made", it is somehow
167 not reliable. This logic is clearly faulty. The fact that the document was written
168 several years later does not make its contents inaccurate. If Mr. Harms' logic
169 held true, then all of Nicor's direct and rebuttal testimony should be discounted

187 given the facts it needed to formulate a sound conclusion in 99-0127. Nicor both
188 withheld crucial information from the Commission and also manipulated other
189 “facts” to create a benchmark that was biased in its favor. The Commission
190 should now be allowed to recompute the benchmark in light of the information
191 that should have been originally been provided by Nicor. The practical effect of
192 Mr. Feingold’s argument, if taken to its logical conclusion, would result in a
193 situation in which Nicor could mislead the Commission and get away with it since
194 it would be “retroactive” to make any corrections at this point. This argument is
195 preposterous and is an insult to the Commission. It also would create an
196 environment whereby companies would be encouraged to lie to the Commission
197 since there would be no repercussions for their actions.

198 Q. How do you respond to Mr. Feingold’s claim on page 23 of his rebuttal testimony
199 that Staff’s and the intervenors’ investigation is inappropriate and contrary to the
200 underlying purpose of the PBR?

201 A. Mr. Feingold seems to believe that Staff and the other parties are being
202 overzealous and all of the adjustments are unwarranted. However, even Nicor’s
203 own employees disagreed with many transactions and schemes that went on
204 during the PBR program, as evidenced by internal memos, witness depositions,
205 and even an internal whistleblower. If everything that Nicor did during the PBR
206 was appropriate, then why did the Lassar report find \$15 million worth of

adjustments against the Company, which the Company itself has already accepted? Obviously, Nicor's conduct prior to and during the PBR has warranted a thorough investigation and recomputation of the benchmark. It is interesting that Mr. Feingold would criticize Staff and the other parties for its in-depth investigation and its "retroactive" adjustments, while Nicor supported and accepted the investigation and resulting "retroactive" adjustments from Mr. Lassar's investigative team. It would seem that Nicor is picking and choosing when an adjustment is appropriate and when it is "retroactive" and inappropriate.

LIFO Decrement Strategy

Q. How do you respond to Mr. Feingold's statement on page 17 of his rebuttal testimony that says "Maple's suggestion that because 'Nicor was using practices that were new to Staff' that somehow that compelled the Company to specify to parties all possible future gas resource strategies under the GCPP"?

A. Mr. Feingold takes a quote of mine and then attaches his own conclusion in order to mischaracterize my statement. I did not suggest that Nicor had to specify to the parties all possible future strategies for the PBR. In his direct testimony, Mr. Feingold had asserted that Staff should have known about the low-cost LIFO layers and should have been able to predict that Nicor would monetize these layers during the PBR. Conversely, I was making the point that Staff, even knowing about the existence of the LIFO layers, did not anticipate that the

227 Company would be depleting those LIFO layers. Mr. Feingold reinforces my
228 point by saying that the strategies used by the Company during the PBR were
229 new to them as well (Nicor Ex. 6.0, p. 17). Of course, the most compelling
230 reason as to why Staff did not anticipate the LIFO decrement is that Staff was
231 repeatedly misled in Docket No. 99-0127 as to Nicor's intention regarding the use
232 of storage. Refer to my direct testimony, pages 15-18 for further explanation.

233 **Midwestern/Tennessee Contracts**

234 Q. Mr. Feingold implies on page 54 of his rebuttal testimony that because the Firm
235 Deliverability Adjustment (FDA) component of the benchmark was comprised of
236 many different costs and credits, it is inappropriate to make an adjustment to an
237 individual item in the FDA. Do you agree with that argument?

238 A. Absolutely not. Unlike other components of the benchmark, the FDA was
239 created based on known and measurable costs and credits that were to occur
240 during the first two years of the PBR. Therefore, we can examine each item in
241 the FDA individually and assign a definite cost or credit pertaining to that one
242 item. A change in the cost assumed for one portion of the FDA does not affect
243 the other portions of the FDA. So in this instance, changing the costs associated
244 with the Midwestern and Tennessee pipeline contracts has no bearing on the
245 costs associated with something such as a storage service provided by NGPL.

246 Therefore, one can easily make adjustments to the FDA on a per item basis.

247 **Magnitude of Savings vs. Adjustments**

248 Q. On page 54 of his direct testimony, Mr. Feingold claims that your adjustments to
249 the FDA should be rejected because they amount to six times the level of
250 savings achieved through the FDA by Nicor during the PBR. Do you agree with
251 this argument?

252 A. No. Mr. Feingold seems to argue that there is a line drawn at zero savings that
253 we are not allowed to cross, regardless of Nicor's actions. Nicor has said all
254 along that savings under the PBR were uncertain and were not guaranteed. Now
255 Mr. Feingold appears to be saying that Nicor is entitled to positive savings and
256 that Staff cannot propose adjustments that would lead to losses under the PBR.

257 In reality, it is very possible that Nicor lost money under the FDA. If Nicor
258 mismanaged its resources or failed to accurately forecast its costs, it could have
259 performed poorly compared to the benchmark. Determining the level of savings
260 after the fact is really irrelevant when deciding whether or not Nicor improperly
261 inflated the benchmark. We should not view it with a "the end justifies the
262 means" mentality. I am merely trying to set the FDA as it would have been
263 established in 1999 had the Commission been given all of the facts. If Nicor
264 improperly inflated the benchmark, which it did, then adjustments should be

265 made to correct it regardless of the outcome.

266 **Computation of Savings During the PBR**

267 Q. On page 55 of his rebuttal testimony, Mr. Feingold accuses you of arguing with
268 his position on benchmark savings when he believes that the two positions are
269 actually similar. Is his assessment correct?

270 A. No, our positions are very different. Mr. Feingold seems to believe that the
271 customer saves money any time the Company beats the benchmark. On the
272 surface, this argument may seem reasonable since the difference between the
273 benchmark and actual gas costs is labeled “savings” under the PBR. However,
274 the benchmark is only an imaginary reference line – it does not necessarily
275 represent the actual costs that ratepayers would otherwise be paying. If the
276 benchmark were set up perfectly, with no bias, and could perfectly predict market
277 conditions under traditional PGA regulation, then the difference between the
278 benchmark and the actual gas costs would truly be a savings to customers.
279 However, the benchmark that was in place did not meet these idealistic criteria,
280 due to the instances where Nicor inflated the benchmark. By Nicor causing the
281 benchmark to overstate gas costs, it was able to create artificial “savings” that
282 improved the Company’s bottom line but did not reduce ratepayers’ gas costs.
283 To help understand why the customers do not necessarily save money just by

284 beating the benchmark, consider this example. The benchmark is supposed to
285 represent the actual costs that the company would have incurred under
286 traditional regulation (without a PBR). The Commission decides to establish a
287 benchmark of \$10. However, we later discover that there are flaws in the
288 benchmark and that the actual costs that the company would have incurred
289 under traditional regulation are \$5. This indicates that the benchmark is over-
290 stated by \$5. Then at the end of the year, the utility calculates its annual cost of
291 gas and determines that it spent \$8 on gas for customers. We can see that
292 customers actually lost \$3 (\$8 for actual costs versus \$5 for traditional regulated
293 costs). However, when viewed from the narrow perspective of the PBR, it would
294 appear that the customer actually saved \$2 (the \$10 benchmark minus the \$8
295 actual gas costs). Then, because there were "savings" of \$2, customers would
296 be forced to share half of those savings, and would return \$1 to the company.
297 Adding the \$1 to the \$3 loss brings the customers' total loss to \$4, all under the
298 guise that the company saved money for ratepayers.

299 From this illustration, it is easy to see that real savings to the customers'
300 pocketbooks don't have anything to do with the benchmark, but have everything
301 to do with actual gas costs as compared to what their costs would have been
302 without the PBR. This also demonstrates that Nicor has an incentive to inflate
303 the benchmark as high as possible.

304 Q. On pages 35-39 of your direct testimony, you disagreed with Mr. Feingold's
305 argument that Nicor had to lower its gas costs by \$29 million each year just to
306 break even under the benchmark. Did Mr. Feingold say anything in his rebuttal
307 testimony that supports his initial argument?

308 A. No. In fact, it appears that Mr. Feingold has recognized the flaw in his logic as
309 he states, "I have reviewed the computational arguments made by Staff witness
310 Maple and GCI witness Mierzwa, and recognize the basis upon which they
311 appear to disagree with my findings on one component of the benefits derived
312 under the GCPP." He makes no effort to revitalize his original argument or
313 calculations, but rather tries to show other ways in which the PBR was good for
314 ratepayers. My response to those arguments is included in my previous Q & A in
315 this document.

316 **Capacity Management Credits**

317 Q. On pages 62-63 of his rebuttal testimony, Mr. Feingold gives several reasons
318 why your adjustments regarding capacity management credits should be
319 rejected. Did Mr. Feingold present any evidence to counter your data or your
320 claims?

321 A. No. Mr. Feingold presents no evidence to explain why Nicor's capacity
322 management credits were significantly lower during 1999. Instead, he only

323 weakly attacks some of my evidence while totally ignoring other evidence
324 altogether. Mr. Feingold implies that the lower credits in 1999 might be due to
325 contractual differences, such as recall rights and contract terms, and he criticizes
326 me for failing to fully analyze all of this data. However, he makes no analysis of
327 his own, nor does he demonstrate in any way that the lower credits were caused
328 by these factors.

329 Q. Mr. Feingold states that “Based on a single handwritten note by an unidentified
330 person, Staff witness Maple constructs an elaborate conspiracy theory that has
331 the Company deliberately holding down its efforts to obtain capacity release
332 credits during 1999.” (Nicor Ex. 6.0, p. 62). Is this statement accurate?

A. No. First, Mr. Feingold apparently failed to read both my testimony and my response to a data request to Nicor regarding this issue, both of which provided more evidence than “a single handwritten note”. On page 31 of my direct testimony, I presented a statement from Mr. Gilmore that shows there were internal discussions about purposely harming customers in order to improve the benchmark for the Nicor. Company employees were [REDACTED] [REDACTED]. If there was any elaborate conspiracy as Mr. Feingold suggests, it was created by the Company to harm ratepayers.

342 Second, Mr. Feingold suggests that the handwritten notes on an internal

343 Company memo (ICC Staff Exhibit 2.0, Attachment F) were from some unknown
344 or unidentified source, implying that the notes are not credible. However, the
345 document with the notes was produced by the Company and came from the file
346 of Karen Olson, one of its employees. Therefore, one can safely deduce that the
347 handwriting came from a Company employee. Staff attempted to uncover the
348 source of the handwriting through data requests to the Company. However,
349 Nicor has been unwilling or unable to disclose the author's identity. Even so,
350 Nicor has offered no explanation as to the meaning of the notes, nor have they
351 disproved Staff's interpretation of their meaning.

352 Third, the data speaks for itself. As I showed on pages 31-32 of my direct
353 testimony, Nicor's 1999 credits were the lowest amount earned in recent history.
354 However, once the PBR was in place and it could profit from any credits earned,
355 it had no trouble almost doubling the credits from one year to the next. While
356 Nicor's credits decreased from 1998 to 1999, other Chicago-area utilities were
357 able to increase their credits during that same time period. This information was
358 provided in response to Nicor's data request NG-Staff 3.67. Mr. Feingold
359 completely disregards my response and contends that I conducted no analysis of
360 the market during the relevant time period. Clearly, Mr. Feingold's contention is
361 not accurate.

362 Q. What type of analysis did you perform of the Chicago-area market?

363 A. I reviewed the capacity management credits of two Chicago-area gas utilities that
364 experienced the same general weather and market forces that Nicor
365 experienced. I analyzed the credits of both companies for the years 1998, 1999,
366 and 2000. These are the same years relevant to this issue, and the same years
367 that I used in Table 3 of my direct testimony (ICC Staff Exhibit 2.0, p. 32).

368 Q. What were the results of your analysis of these two alternate utilities?

369 A. I found that these utilities had no problem earning credits in 1999, and actually
370 were able to double the amount of credits from 1998 to 1999. So while Mr.
371 Feingold would suggest that Nicor's sub par performance in 1999 was due to
372 poor market conditions, the data shows that in fact, the market presented ample
373 opportunities for earning credits.

374 Q. How would you characterize your proposed adjustment regarding this issue?

375 A. I would characterize my adjustment as being fairly conservative. My
376 recommendation was to set the benchmarked credits value to equal the amount
377 of credits earned in 1998. The credits that Nicor earned in 1998 were the lowest
378 value in recent history, excluding 1999. Taking a historical average or using
379 values from the PBR would have increased my adjustment substantially. Using
380 the two alternate utilities as a basis for my adjustment would have also lead to a
381 much larger value. Instead, I went with the most conservative approach and

382 chose to use the actual credits received in 1998 as a basis for adjusting the
383 benchmark.

384 Q. Does this conclude your rebuttal testimony?

385 A. Yes.